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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 226

WILLIAM A. DYER, LULA LYNCH, ADMINISTRATRIX OF THE ESTATE OF EVERETT DYER, DECEASED, AND LULA LYNCH, ADMINISTRATRIX OF THE ESTATE OF MINNIE DYER, DECEASED,

Petitioners,

vs.

THE UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, AND BRIEF IN SUPPORT THEREOF.

WARREN E. MILLER,
Counsel for Petitioner.

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vs.

THE UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

Petitioners pray that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the District of Columbia. Judgment was entered in the above entitled case March 4, 1946 and motion for rehearing was filed, which was denied (R. 85) March 22, 1946.

Reasons Relied upon for Allowance of Writ

1. The decision of the United States Court of Appeals for the District of Columbia in this case is contrary to decisions

of this and other appellate courts, to wit:—*United States* v. *Bollman* (8-C. C. A.), 73 F. (2d) 133; *Rosario* v. *United States* (United States Court of Appeals for the District of Columbia), 106 F. (2d) 844; *United States* v. *Knott* (6th C. C. A.), 69 F. (2d) 907; *Burgett* v. *United States* (7th C. C. A.), 80 F. (2d) 151, and *Morris* v. *United States* (5th C. C. A.), 96 F. (2d) 731.

2. The test here is whether, upon receipt of letter of January 31, 1925 from O. W. Clark (R. 12-13), the District Court would have had jurisdiction of a suit which used that letter as evidence of the required "disagreement," if not, the action of the court below was clearly erroneous because the Statute of Limitations would not begin to run until suit could be filed. In determining whether this letter constituted a "disagreement" the court below erroneously construed the term "disagreement" as set forth in Sec. 19, World War Veterans' Act, 1924, approved June 7, 1924 reading "In the event of disagreement * * *."

Therefore, the court below has decided a question of general importance relating to the construction or application of a statute of the United States which has not been, but should be, settled by this court.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued by this Court, directed to the United States Court of Appeals for the District of Columbia, commanding that court to certify and send to this Court, for its review and determination, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, No. 9032, William A. Dyer, Lula Lynch, Administratrix of the estate of Everett Dyer, deceased and Lula Lynch, Administratrix of the estate of Minnie Dyer, deceased, appellants v. United States of Amer-

ica, Appellee, and that the judgment of the court below be reversed by this Court, and that your petitioners have such other and further relief in the premises as to this Court may seem just.

WARREN E. MILLER,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

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vs.

THE UNITED STATES OF AMERICA

BRIEF IN SUPPORT OF PETITION

Opinions Below

The opinion of the United States Court of Appeals for the District of Columbia, together with dissenting opinion, is reported in 154 F. (2d) 14 (R. 79-83).

Jurisdiction

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

Questions Presented

Whether nonpayment of an insurance claim, admittedly payable under the law, and the writing of a letter by a gov-

ernment agency under the mistaken belief that such claim was not lawfully payable, is sufficient to commence the running of the time under the pertinent limitations statute and thus bar the right to sue, when negotiations regarding the claim continued and the government later issued a letter granting the right to sue.

The decision of this question involves the consideration of the following questions:

(a) Whether O. W. Clark, who signed the letter January 31, 1925 (R. 12-13) was acting "on an appeal to the Director" as was required by the applicable statute in order to constitute a "disagreement" and thus grant the right to institute suit.

(b) Whether letter of January 31, 1925, from O. W. Clark (R. 12-13) was a denial of the right to make a claim or a "disagreement" as contemplated by the statute then in force.

Statutes Involved

Sec. 2. Pub. No. 628, 68th Congress (c. 553, 43 Stat. 1302) enacted March 4, 1925 provides:

> "Sec. 2. Section 19 of the World War Veterans' Act, 1924, approved June 7, 1924, is hereby amended to read as follows:
>
> "Sec. 19. In the event of disagreement as to claim under a contract of insurance between the Bureau and any person or persons claiming thereunder an action on the claim may be brought against the United States either in the Supreme Court of the District of Columbia or in the District Court of the United States in and for the district in which such persons or any one of them resides, and jurisdiction is hereby conferred upon such courts to hear and determine all such controversies. * * *"

The above statute was further amended by the Act of July 3, 1930 (Chapter 849, par. 4, 46 Stat. 991, 992), which provided:

> "• • • The term 'claim' as used in this section, means any writing which alleges permanent and total disability at a time when the contract of insurance was in force, or which uses words showing an intention to claim insurance benefits and *the term 'disagreement' means a denial of the claim by the director or some one acting in his name on an appeal to the director.*". Italics supplied.)

The Act of June 7, 1924 (c. 320, 43 Stat. 626) provides:

> "Sec. 305. Where any person has heretofore allowed his insurance to lapse while suffering from a compensable disability for which compensation was not collected and dies or has died, or becomes or has become permanently and totally disabled and at the time of such death or permanent total disability was or is entitled to compensation remaining uncollected, then and in that event so much of his insurance as said uncollected compensation, computed in all cases at the rate provided by section 302 of the War Risk Insurance Act as amended December 24, 1919, would purchase if applied as premiums when due, shall not be considered as lapsed; and the United States Veterans' Bureau is hereby authorized and directed to pay to said soldier, or his beneficiaries as the case may be the amount of said insurance less the unpaid premiums and interest thereon at 5 per centum per annum compounded annually in installments as provided by law."

Pub. 844, 74th Congress (49 Stat. 2035) Act of June 29, 1936 provides:

> "Sec. 404. That in addition to the suspension of the limitation for the period elapsing between the filing in the Veterans' Administration of the claim under a contract of insurance and the denial thereof by the

Administrator of Veterans' Affairs or someone acting in his name, the claimant shall have nine days from the date of the mailing of notice of such denial within which to file suit. This Act is made effective as of July 3, 1930, and shall apply to all suits now pending against the United States under the provisions of section 19, World War Veterans' Act, 1924, as amended; and any suit which has been dismissed solely on the ground that the period for filing suit has elapsed but where in the extension of the period for filing suit as prescribed herein would have permitted such suit to have been heard and determined may be reinstated within ninety days from the date of enactment of this Act: *Provided*, That on and after the date of enactment of this Act, notice of denial of the claim under a contract of insurance by the Administrator of Veterans' Affairs or someone acting in his name shall be by registered mail directed to the claimant's last address of record: *Provided further* that the term 'denial of the claim' means the denial of the claim after consideration of its merits." (Italics supplied).

Statement of the Case

This case involves the court's jurisdiction to award benefits under a contract of yearly renewable term insurance matured by the occurrence of total, permanent disability of the insured on April 20, 1920, under findings made by the Veterans' Administration. Administrative denial of payment was based upon a statutory construction adopted by the Administration but shown by uniform judicial construction to have been erroneous.

The District Court held that it lacked jurisdiction on the ground that the suit was not instituted within the time prescribed by Sec. 19, World War Veterans' Act, 1924, as amended, and the court below affirmed. Petitioner contends that although the claim here sued on was filed in the Bureau of War Risk Insurance (predecessor of the

Veterans' Administration) on or about December 31, 1924 (R. 11-12), and although a beneficiary under the policy, and after her death, her successors in interest along with a surviving beneficiary, repeatedly requested the Administration to act upon the claim either granting or denying it, as action was not taken until April 26, 1939, the running of the period of limitations provided by the statute was suspended from December 31, 1924 to April 29, 1939, and the present suit was timely.

The insurance policy sued on was issued to Everett Dyer during his military service which ended on May 21, 1919. The policy was kept in force through June 1919 by premium payments, and thereafter until the insured became totally and permanently disabled on April 20, 1920, the policy was kept in force under the provisions of Section 305 of the World War Veterans' Act. The facts upon which operation of the provisions of that Section rest to prevent lapse of the insurance have been established by findings of the Veterans' Administration as follows:

1. When the insurance lapsed for non-payment of premiums in June 1919, the insured had a compensable disability for which compensation was not then collected (R. 18-19, 21, 73).

2. The insured became totally and permanently disabled on April 20, 1920 (R. 12-22, 40).

3. At the time the insured became totally and permanently disabled, he was entitled to uncollected compensation that was sufficient, if applied as premiums on his insurance, to have kept all of it in force until the date he became totally and permanently disabled (R. 12-13, 18-20, 73).

The insured died on May 18, 1922, without having made claim for the insurance. Thereafter in a letter dated December 1, 1924, application was made on behalf of Minnie

Dyer, mother of the insured, and one of the beneficiaries under his policy, for "reinstatement of life insurance which he carried at the time of his discharge from the army." In explanation of the claimed right to "reinstatement," it was pointed out that his mother had received compensation for injuries he suffered in service beginning the day following his discharge from the service, May 22, 1919, and that he died on May 18, 1922. The letter also requested that information or forms necessary to make formal application for the desired "reinstatement" be provided and stated the intention of the writer that the letter "be taken as a sufficient application to entitle Mrs. Dyer to save her claim" (R. 20-21).

There was never any direct reply to the letter referred to above, nor any reply of any character, indirect or otherwise, unless it was a single sentence contained in a letter dated January 31, 1925, dealing for the most part with disability and dependency compensation. The sentence referred to is as follows:

"You are still further advised that the insurance of the above captioned lapsed for non-payment of premium July 3, 1919, and therefore, insurance is not payable."

On September 20, 1932 (R. 29), a formal claim for the insurance was filed (R. 25-29). No action on that claim is shown to have been taken until April 27, 1935, when a decision was rendered by the Insurance Claims Council to the effect that the insured did not become totally, permanently disabled prior to lapse of his policy for non-payment of the premium due July, 1919 (R. 29-33). Failure of that decision to consider any rights under the provisions of Section 305 of the Act is accounted for by the practice then followed in the Administration. By reason of its interpretation of the Economy Act of March 20, 1933, the Adminis-

tration ceased consideration on that date of all claims for total permanent disability benefits under term insurance (R. 51). Consideration of claims under Section 305 of the Act was not resumed until April 13, 1937 (R. 53).

In a letter written on behalf of the claimants to this insurance on January 27, 1939, the attention of the Administration was invited to the fact that no consideration was given at the time of the prior denial of the claim to the provisions of Section 305 and such consideration was expressly requested (R. 34-35). This request seems to have been summarily disposed of by prompt reply dated January 31, 1939 (R. 35), upon the ground that the insured had been found to have no compensable disability while his insurance was in force (R. 36). On February 8, 1939, a further specific request for consideration of the claim under the provisions of Section 305 of the Act was made on behalf of the claimants along with the recognition that the initial compensable disability rating of the insured at the time of his discharge from the service had been set aside and assertion of the view that under recent court decisions change of rating did not preclude payment of the insurance (R. 36). A letter from the Administration to William A. Dyer, one of the beneficiaries under the policy, dated April 26, 1939, advised that the requested consideration of the claim under the provisions of Section 305 of the Act had been given and that the claim had been denied (R. 41). The exact ground for denial was not stated and the decision of the Insurance Claims Council bearing same date as the letter contains nothing to show consideration under Section 305 and therefore, of course, does not specify the precise ground for denial of the claim under that Section (R. 40). The decision recited a finding, however, that the insured was totally and permanently disabled from April 22, 1920 (R. 40).

The defendant in its "second defense" in its answer filed herein (R. 10) raised the defense of the Statute of Limita-

tion which defense was sustained by the Court (R. 74), and that is the sole question here presented.

Assignment of Errors

1. The majority opinion of the court below has decided an important question relating to the construction of a statute of the United States contrary to its own prior decision and contrary to decisions of other appellant courts, to wit, section 19, World War Veterans' Act, 1924, as amended.

2. The majority opinion of the court below has erroneously given a narrow construction to a highly remedial statute so as to defeat the intent and purpose of such statute.

3. The majority opinion of the court below erred in affirming the action of the Trial Court.

Summary of Argument

I

There was only a denial of the right to make a claim and not a disagreement as prescribed by statute.

II

No disagreement can exist until action has been taken by the director or someone acting in his name on an appeal to the director.

III

Continued consideration of claim after January 31, 1925, precludes action of lower court.

IV

This statute, being remedial in nature, is entitled to a liberal construction in favor of the remedy afforded by the law and those entitled to its benefits.

ARGUMENT

I

There Was Only a Denial of the Right to Make a Claim and Not a "Disagreement" as Prescribed by Statute

The majority opinion of the court below in holding that the letter from O. W. Clark (R. 12-13) operated as a denial of the right to make a claim stated:

> "The Bureau's reply * * * was, we think, an unequivocal answer to the query whether there was existing or reinstatable insurance, and like a definite 'denial' of any right to make claim thereto."

True, the "denial" was a denial of the right to make a claim. However, this was not a "disagreement" as that word is used in the statute which was in force at the time the letter of January 1, 1935 was written.

The statute (Section 19, World War Veterans Act 1924, as amended) requires a "disagreement" as a pre-requisite to the right to institute suit in court. Accepting the decision of the court below for its face value with respect to the "denial" we still have here less than the statutory requirement of a "disagreement" as prescribed by the statute. The court below lost sight of the significance attached by statute to the term "disagreement." The denial of the right to make claim clearly is not a denial of the claim itself sufficient to vest jurisdiction in a District Court to hear and determine the issues in a case of this character.

There is a fundamental and substantial difference between a "denial" of the right to make a claim and a "disagreement" as that word is used in the statute which was enforced at the time this letter of January 31, 1925 was written. The term "disagreement" has a definite, fixed

meaning and contemplates formal administrative action following a prescribed procedure. This is no mere play on words.

As the existence of a statutory "disagreement" is a prerequisite to vesting jurisdiction in the court and authorizing it to hear a case of this character there have been numerous court decisions on the question of whether a "disagreement" exists in a variety of circumstances.

The necessity of action by the director is demonstrated by the reported case of *Miller* v. *United States,* 57 Fed. (2d) 889, where the Court held that the action of the director of the United States Veterans' Bureau in approving the action of the Advisory Group on Appeals constituted a "disagreement" under the statute. That decision shows the necessity of some action being taken by the *Director* of the U. S. Veterans' Bureau or "some one acting in his name on an appeal to the director" in order for the required jurisdictional "disagreement" to exist. Absent a record of such action by such person or persons, no "disagreement" exists. The "appeal to the director" mentioned in the statute clearly indicated the necessity of some further action being taken by the claimant from an adverse action of someone below the director's level. There is absolutely no record of such appeal being filed here, so O. W. Clark, who signed the letter of January 31, 1925, could not be acting "on an appeal to the Director" as was required by the statute in order for a "disagreement" to exist.

In the case of *Miller* v. *U. S.,* 57 Fed. (2d) 889, the Director of the Veterans' Bureau denied plaintiff's claim, the denial taking the form of an approval of the action of the advisory group on appeals, recommending that the plaintiff's appeal for a permanent and total disability rating from date of discharge be denied. That Court held that this action of the director constituted a "disagree-

ment'' and entitled the plaintiff to bring an action against the United States in the District Court. In the instant case, however, there was a decision by the Central Board of Appeals (R. 22-23), but this decision was not approved by either the director or someone acting on an appeal to him. Consequently, there was no ''disagreement'' in the instant case.

In the case of *United States* v. *Collins*, 61 F. (2d) (4th C. C. A.) 1002, a letter was written the insured by the Veterans' Bureau stating ''the insurance is not in force and effect at this time, having lapsed for non-payment of premium due September 1, 1918.'' This, it was unsuccessfully urged by the claimant, was a denial of the insurance claim sufficient to vest jurisdiction in the courts by constituting a ''disagreement'' as contemplated by Section 19, World War Veterans' Act, 1924, as amended. However, the 4th Circuit Court of Appeals in the case after quoting this wording in this letter stated:

> ''It is this statement which is relied upon to show the requisite disagreement. But, in our opinion, it cannot properly be so interpreted.''

The letter from O. W. Clark in the instant case gives the same information as was given in the letter under consideration in the *Collins* case cited above.

In *Fouts* v. *United States*, 67 F. (2d) (5th C. C. A.) 249, a suit involving Section 305, World War Veterans' Act, 1924, as amended (as is involved here), was filed for the remainder of the insurance after the Veterans' Administration ruled that part of it was payable under Section 305. This case turned on whether the facts showed the requisite ''disagreement'' and vested jurisdiction in the court and the 5th Circuit Court of Appeals held:

> Suit is permitted only after a disagreement is reached; and, because of dispute as to what would

constitute a disagreement, it was enacted July 3, 1930, 46 Stats. 993 (38 USCA 443), that "the term 'disagreement' means a denial of the claim *by the director or some one acting in his name on an appeal to the director.*" There is nothing in this record to show that any appeal was ever taken to the Director of the Veterans' Bureau, or that he or anyone acting for him had rejected the claim of the executrix. The Director is not mentioned in the pleadings or in the evidence as we have it. *Congress could so condition the consent of the United States to be sued as to require a precedent appeal to the Director and adverse action by him. The suit may not be maintained otherwise.* United States *v.* Densmore (C.C.A.) 58 F. (2d) 748; United States *v.* Collins (C.C.A.) 61 F. (2d) 1002; Griffin *v.* United States (C.C.A.) 60 F. (2d) 339; United States *v.* Peters (C.C.A.) 62 F. (2d) 977. It is the general rule that in suing a government administrative remedies must be exhausted before appeal is made to the courts." (italics supplied)

* * * * * * *

"Under Section 445 the statute of limitations is suspended during the pendency of the claim in the Veterans' Administration. Cf. United States *v.* Knott, 6 Cir., 69 Fed. 2d 907; United States *v.* Valndza, 6 Cir., 81 F. 2d 615; United States *v.* Green, 6 Cir., 84 F. 2d 449."

As the claim presented here was for the payment of insurance to begin as of a date subsequent to the lapse of insurance the fact that whether or not the insurance had lapsed had no bearing whatever upon this claim. Such fact would only have been relevant had claim been based on the theory that the policy matured prior to the date of lapse. The letter making claim was based on Section 305, which provided for revival and payment of insurance in the event that at the date of lapse the insured was suffering from a compensable disability for which compensation was uncollected, followed

by total and permanent disability at a time when uncollected compensation was owing him by the Government. These facts existed here. That was the only type of claim that was suggested by the letter making claim.

The fundamental difference between these two types of claims is pointed out by the decision of the 6th Circuit Court of Appeals in the case of *United States* v. *Knott,* 69 F. (2d) 907. In that case the original claim presented to the Bureau and later sued on appears to have been based on the theory of total and permanent disability before date of lapse and disagreement as to that claim. At the trial before the court without a jury there was a finding for the Government. A new trial was granted and claimant then filed an amended petition and based his claim on Section 305. It did not appear that a claim based on Section 305 had theretofore been presented to the Bureau, and a judgment below in favor of the claimant, based on Section 305, was reversed and remanded because of absence of proof that there was disagreement as to the claim litigated.

In the *Knott* case the court also mentioned that a letter from special counsel of the Veterans' Bureau, written in response to an inquiry by a Congressman and urged by the Government as giving rise to disagreement, was plainly consistent with the view that it was merely a courteous answer to the inquiry relating to the status of a claim for insurance then pending, rather than as a ruling on the claim. So, here, the letter of January 31, 1925 was nothing more than an informative letter giving information. The claimant had not appealed through the appellate tribunals of the Bureau to the Director.

In the case of *United States* v. *Weaver,* 86 F. (2d) 372, C. C. A. 4th, the distinction between the two types of claims is made plain, one type being based upon total and permanent disability before date of lapse, and the other being based

on the theory of revivor of insurance by virtue of Sec. 305 of the World War Veterans' Act.

As the only basis given for the statement in the letter that insurance was not payable was that the insurance was lapsed July 3, 1919, and as no mention whatever was made of any findings or determinations as to the presence or absence of facts and conditions that would give rise to insurance rights under Section 305, the necessary inference is that such matters were not considered or passed upon. Such being the case, then there was no denial of the claim *after consideration of its merits,* as was essential to give rise to disagreement.

In the case of *Burgett* v. *United States,* 80 F. (2d) 151, C. C. A. 7th, the court considered the necessity of the denial of a claim *after consideration of its merits,* in order to give rise to disagreement and said:

> "Under the War Risk Insurance Act the Government has given its consent to be sued, but only after a claim has been filed and disallowed. In other words, there must be a disagreement between the claimant and the Government *as to the merits of the claim* before a suit may be instituted." (Italics supplied.)

The action taken by the Court below in the instant case is contrary to the decision of the Fifth Circuit Court of Appeals in the case of *Morris* v. *United States,* 96 F. (2d) 731. In that case, claim was made in August, 1921, and the letter similar to the one dated January 31, 1925, written in the instant case was sent September 8, 1921. In 1926 another claim was made which was not denied until some ten years later. The government contended, in that case, as they are contending here, that the letter written September 8, 1921, was a denial of the claim. The Court, however, held that this letter was not a denial of the claim "after consideration of its merits" as required by the applicable statute.

II

No "Disagreement" Can Exist Until Action Has Been Taken by the Director or Someone Acting in His Name on an Appeal to the Director.

Although the letter in question was written before the passage of the amendment of 1930, the earlier act should be considered in the light of this amendment, since the amendment reflects the intent of Congress.

In the report of the Senate Finance Committee relative to the amendment, it was said that the term "claim" has for its purpose the establishment of a definite rule that before suit is brought a claimant must make a claim for insurance *and prosecute his case on appeal through the appellate agencies of the Bureau before he shall have the right to enter suit.* Senate Report No. 1128, 2d Sess., 71st Congress (italics supplied).

There was no appeal taken from letter of January 31, 1925. In the absence of such an appeal therefor there could have been no decision by the "director or someone acting in his name on an appeal to the director."

There is absolutely nothing in the record here to indicate that any final action was taken on this claim by the director or someone acting in his name on an appeal to the director. The word "appeal" as used in the above mentioned statute contemplates, first, an adverse decision and, second, an appeal from such adverse decision to the director and then action on the appeal by the director or someone acting in his name after an appeal has been taken to the director. Hundreds of cases were dismissed by the Courts throughout the country because they were prematurely filed before the existence of the statutory "disagreement" which vested in the Courts jurisdiction to hear and determine the issues in the individual case.

Even though the letter might be construed as a "denial" as this Court has held (which appellant does not admit) it still falls short of the term "disagreement" as contemplated by statute. The decision of the court, below, if allowed to stand, would amount in effect to legislation because it clearly overreaches the statute. For years the term "disagreement" has been construed by the courts.

If suit had been instituted in this case in reliance upon this letter of January 31, 1925, such action would have been prematurely filed upon the basis of this letter. If suit had been so filed a motion to dismiss upon the ground that the Court lacked jurisdiction would have been granted.

The question of whether or not a statutory "disagreement" exists in a given case has given considerable difficulty to the Courts in the years past. On June 29, 1936 in an effort to clarify the intention of Congress because of the many cases in which a situation exists similar to that here presented in the instant case, the law was amended which made the enactment of Title 4 Pub. 844 74th Congress (49 Stat. 2035) providing:

> "That the term 'denial of the claim' means the denial of claim after consideration of its merits."

It is obviously the expressed intention of Congress to remedy uncertain situations similar to that here presented and it is respectfully submitted that the Courts should follow the plain intention of Congress in this respect, which the court below has not done.

III

Continued Consideration of Claim After January 31, 1925, Precludes Action of Lower Court

As was pointed out by the dissenting opinion in this case, the negotiations occurring subsequent to January 31, 1925, precluded the action taken here by the Court below. This

action is contrary to the decisions in the cases of *Rosario* v. *United States*, 106 Fed. 2d 844, and *United States* v. *Bollman*, 73 Fed. 2d 133. In the latter case the 8th Circuit Court of Appeals held:

> "So long as the bureau treats or acts in a manner which would lead the claimant reasonably to believe that it is holding the matter open, we think it would be unjust to regard it as closed by the first order. The bureau can at any time definitely incriminate such proceedings by stating that it declines to reopen and that its order is final."

IV

This Statute, Being Remedial in Nature, Is Entitled to Liberal Construction in Favor of the Remedy Afforded by the Law and Those Entitled to Its Benefits.

It is respectfully submitted that as this statute is remedial in nature a liberal construction should be given it in favor of the remedy afforded by law and those entitled to its benefits. As stated, 50 Am. Jur. 415-416:

> "It is a general rule of law that statutes which are remedial in nature are entitled to a liberal construction, in favor of the remedy provided by law, or in favor of those entitled to the benefits of the statute."

The construction as placed by the lower Court upon this statute is too narrow. Such narrow construction deprives this insured of a right which Congress clearly intended to confer, and would defeat the generous purpose and policy of Congress behind the enactment.

The Courts have consistently applied liberal rules of construction when considering statutes relating to insurance granted by the Government to members of the Armed Forces. *Cf. United States* v. *Arzner*, 287 U. S. 470, 77 L. Ed. 436, and *Westling* v. *United States*, 64 Fed. (2d) 464.

In *White* v. *United States*, 46 S. Ct. 274, in considering insurance given by the Government the Court said:

> "The insurance was a contract, to be sure, for which a premium was paid, but it was not one entered into by the United States for gain. All soldiers were given a right to it and the relation of the Government to them if not paternal was at least avuncular. It was a relation of benevolence established by the Government at considerable cost to itself for the soldier's good."

Conclusion

Wherefore, it is respectfully submitted that this writ of Certiorari should issue, as prayed.

WARREN E. MILLER,
Counsel for Petitioner.

(5320)

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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 226

WILLIAM A. DYER, ET AL., PETITIONERS,

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The District Court of the United States for the District of Columbia did not render an opinion. The opinions in the Court of Appeals (R. 79–83) are reported at 154 F. 2d 14.

JURISDICTION

The judgment of the Court of Appeals was entered on March 4, 1946 (R. 84). A petition for rehearing was denied on March 22, 1946 (R. 85). The petition for a writ of certiorari was filed on June 22, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Section 19 of the World War Veterans' Act, 1924, as amended, provides that the running of the six-year period of limitation upon suit provided thereby is suspended for the period between the filing of a claim for insurance benefits in the Veterans' Administration and the denial of such claim by the Administrator of Veterans' Affairs.[1] The question presented is whether a letter from the Veterans' Bureau to the claimant's attorneys, signed by an official "For the Director" and containing a statement that "insurance is not payable," constituted a denial of the claim so as to terminate a suspension of the period of limitations.

STATUTES INVOLVED

The pertinent provisions of the statutes involved appear in the Appendix, pp. 12–14.

STATEMENT

Everett Dyer, while in the military service of the United States in the first World War, applied for and was granted two $5,000 contracts of War Risk yearly renewable term insurance (R. 2, 14). The policies lapsed for nonpayment of the premium

[1] Under Executive Orders pursuant to Section 1 of the Act of July 3, 1930, c. 863, 46 Stat. 1016, 38 U. S. C. § 11, the Veterans' Bureau was succeeded by the Veterans' Administration and the Director of the Bureau by the Administrator of Veterans' Affairs.

due June 1, 1919 (R. 2, 14). The insured died on May 18, 1922 (R. 2–3, 21). On December 31, 1924, the attorneys for Minnie Dyer, the insured's mother and one of the beneficiaries under the policies, wrote a letter which advised the Veterans' Bureau of the insured's death and that Mrs. Dyer had requested them to apply "for a reinstatement of Life Insurance which he carried at the time of his discharge from the army" (R. 2, 11–12, 20–21). They asked that the letter be considered "a sufficient application to entitle Mrs. Dyer to save her claim" and that the necessary blanks for making formal application be mailed to them "if Mrs. Dyer is entitled to have this insurance reinstated" (R. 12, 21).

On January 12, 1925, the Central Office Board of Appeals of the Veterans' Bureau rendered a decision to the effect that the insured had not suffered from any compensable disability until April 20, 1920, but that his disability was total and permanent from that date until his death (R. 22–24).

On January 31, 1925, the Bureau replied to the attorneys' letter, advising "that action on this case has been held in abeyance pending a decision from the Board of Appeals" and that under that decision additional accrued compensation was due the insured's estate in the amount of approximately $490, which, upon receipt of letters of administration, would be paid to his

administrator (R. 12–13, 23–24). After adding that Mrs. Dyer's claim for dependency compensation was still under consideration (R. 13, 24), the letter stated:

> You are still further advised that the insurance of the above captioned [the insured] lapsed for non-payment of premium July 3, 1919, and therefore, insurance is not payable (R. 13, 24).

The letter was signed by an acting assistant director "For the Director" (R. 13, 24).

No further action was taken by anyone concerning the insurance in question until September 26, 1932, when a formal claim for the insurance proceeds was made (R. 25–30). The Insurance Claims Council found that "on the evidence now of record the veteran is not shown to have been permanently and totally disabled, for insurance purposes, at any time while the insurance contract was in force" and denied the claim (R. 31–32). Thereafter, on request for reconsideration made on behalf of the claimants, the claim was reconsidered and again, on April 26, 1939, denied (R. 34–41).

On December 28, 1942, petitioners brought this suit to recover the death benefits under the insurance policies (R. 1–5), basing their claim upon allegations to the effect that when the insurance lapsed the insured was "suffering from a compensable disability" for which he

had not then received compensation, and that there was a sufficient amount due him at the time of death to have revived the policies under Section 305 of the World War Veterans' Act, 1924, as amended, *infra,* p. 13 (R. 2–3). Respondent answered (R. 6–10), defending on the merits (R. 6–10) and on the ground that the "action was not commenced within the time required by Section 19, World War Veterans' Act, 1924, as amended July 3, 1930 (Section 445, Title 38, U. S. C.)" (R. 10) and praying that the "action be dismissed for want of jurisdiction" (R. 10).

The district court sustained the Government's "plea of limitations", found the court was "without jurisdiction", and dismissed the suit (R. 74). On appeal, the court below, one judge dissenting (R. 81–83), affirmed the judgment of the district court (R. 79–81, 84).

ARGUMENT

Section 19 of the World War Veterans' Act, 1924, as amended,[2] *infra,* pp. 12–13, provides that an action may be brought against the United States on a war risk insurance claim "In the event of disagreement as to claim * * * between the Veterans' Administration and" the claim-

[2] Act of June 7, 1924, c. 320, § 19, 43 Stat. 612; Act of March 4, 1925, c. 553, § 2, 43 Stat. 1302; Act of May 29, 1928, c. 875, § 1, 45 Stat. 964; Act of July 3, 1930, c. 849, § 4, 46 Stat. 992; Act of July 3, 1930, c. 863, §§ 1, 2, 46 Stat. 1016; 38 U. S. C. 445.

ants; that such action may not be brought after "six years after the right accrued for which the claim is made"; but that "this limitation is suspended for the period elapsing between the filing in the Veterans' Administration of the claim sued upon and the denial of said claim by the Administrator of Veterans' Affairs." The question presented is whether the letter written on January 31, 1925, by the Veterans' Bureau, in the name of the Director of the Bureau, advising the claimant's attorneys that no insurance was payable on the claim (R. 12–13, 23–24) constituted a denial of the claim so as to terminate the suspension of the limitation period provided by Section 19 of the World War Veterans' Act, 1924, as amended. It is clear that the attorneys' letter (R. 11–12, 20–21) to which the January 31, 1925, letter replied "was a claim for insurance" (R. 80; Pet. 16–17). It is equally clear that if the January 31 letter "constituted a denial of this claim * * * the statute of limitations [provided by Section 19 of the World War Veterans' Act, 1924, as amended] applies and the order of the court below must be affirmed" (R. 80).

The court below held that the Veterans' Bureau's reply of January 31, 1925, to the claimant's attorneys that the policy had lapsed and that "insurance is not payable" (R. 13, 24) was, in the language of Chief Justice Groner, "an unequivocal answer to the query whether there

was existing or reinstatable insurance, and likewise a definite 'denial' of any right to make claim thereto. In this respect it was both responsive to the request and a denial of it. And that the position of the Bureau in this regard was so understood by claimants seems to us perfectly clear from the fact that nothing more happened in relation to the claim from that time for a period of seven years. It would be trifling with words, we think, to say that the Bureau's answer * * * was not enough to constitute a denial of the claim and hence to create a disagreement within the meaning of the statute" (R. 81). The court accordingly held that "the limitation of the statute is a complete bar to the action" (R. 81) and held the doctrine of "continued negotiations," applied by the court below in *Rosario* v. *United States,* 106 F. 2d 844, 848 (App. D. C.), certiorari denied, 308 U. S. 606, inapplicable because there was nothing to show that any of the parties considered the claim pending during the seven years which elapsed between the filing of the first and second claims (R. 81). The decision below is plainly correct in each of its aspects.

1. Clearly the Bureau's letter of January 31, 1925, signed by an Acting Assistant Director "For the Director" and stating that "insurance is not payable" on the claim made (R. 12–13, 23–24) was responsive to and a denial, after a consideration of the merits (R. 12, 22–23), of the insurance

claim asserted in the letter to which it was replying.[3] The failure of the claimants as well as of the Bureau to take further action with respect to the claim for more than seven years is consistent only with the view that the Bureau's letter constituted such a denial. Certainly the Government could not have successfully maintained a position to the contrary, had the claimant brought suit relying upon that letter as a "disagreement." *Westling* v. *United States,* 64 F. 2d 464, 466 (C. C. A. 9); *United States* v. *Bass,* 64 F. 2d 467, 468–469 (C. C. A. 7); *Hansen* v. *United States,* 67 F. 2d 613, 614 (C. C. A. 7), certiorari denied, 291 U. S. 670; *McLaughlin* v. *United States,* 74 F. 2d 506, 507 (C. C. A. 10).[4]

Petitioners assert (Pet. 19–20), however, that there was no "disagreement" since, as that term was defined in the 1930 amendment of Section 19

[3] The distinction which petitioners seek to draw (Pet. 13) between a denial of the claim and a denial of the right to make a claim is, we believe, without substance.

[4] The cases cited by petitioners (Pet. 2, 15) as in conflict with the decision below do not support their argument. In *Morris* v. *United States*, 96 F. 2d 731 (C. C. A. 5), and *Burgett* v. *United States*, 80 F. 2d 151 (C. C. A. 7), the Veterans' Administration in each case sought additional information in support of the claim made. In *United States* v. *Knott*, 69 F. 2d 907 (C. C. A. 6), the letter which was asserted to evidence the necessary "disagreement" was merely "a courteous answer" to a Senator's inquiry made on behalf of the claimant. In *United States* v. *Collins*, 61 F. 2d 1002 (C. C. A. 4), it was held that there was no "disagreement" since no appropriate claim had been made.

of the World War Veterans' Act, 1924 (46 Stat. 992, 993; *infra,* pp. 12–13), it was necessary for the denial of the claim to be "by the director or someone acting in his name on an appeal to the director." Even assuming the applicability of the 1930 amendment, it should be noted, first, that the Bureau's letter of January 31, 1925 (R. 12–13, 23–24) was written after the decision of January 12, 1925, of the Central Office Board of Appeals (R. 22–23) and specifically referred to that decision (R. 12, 23), and that the letter was signed in the name of the Director (R. 13, 24). But the assumption cannot be made, because the "disagreement" in the instant case occurred before the 1930 amendment and therefore cannot be governed thereby. Moreover, the 1930 amendment was clarified retroactively by the Joint Resolution of January 28, 1935 (49 Stat. 1, c. 1; *infra,* pp. 13–14), which provided that a denial by the Administrator "or any employee or agency of the Veterans' Administration heretofore or hereafter designated therefor by the Administrator shall constitute a disagreement for the purposes of section 19 of the World War Veterans' Act * * *."

2. Since the Bureau's letter of January 31, 1925 was a "disagreement", the six-year period of limitations provided by Section 19 of the World War Veterans' Act, 1924, as amended, *infra,* pp. 12–13, clearly bars the instant suit. The suspension of

limitations, also provided for by that section, was terminated by that letter. The claim was not re-asserted until more than seven years later (R. 25–31). The purpose of the statute would be defeated if the subsequent administrative reconsideration of the claim were permitted to lift the bar of the statute after there had been a "disagreement" upon which suit could have been brought. *Roskos* v. *United States,* 130 F. 2d 751 (C. C. A. 3); *Stulce* v. *United States,* 128 F. 2d 327 (C. C. A. 8); *Ball* v. *United States,* 101 F. 2d 272 (C. C. A. 6), certiorari denied, 308 U. S. 563; *Jenkins* v. *United States,* 86 F. 2d 123 (C. C. A. 5), certiorari denied, 300 U. S. 675; *Dowell* v. *United States,* 86 F. 2d 120 (C. C. A. 5). Nor is the doctrine of "continued negotiations", applied in *Rosario* v. *United States,* 106 F. 2d 844, 848 (App. D. C.), certiorari denied, 308 U. S. 606, and *United States* v. *Bollman,* 73 F. 2d 133 (C. C. A. 8),[5] applicable here, since in those cases, as distinguished from the situation in the instant case, the negotiations relied upon were begun before the period of limitations had expired (See R. 81). Contrary to petitioners' assertion (Pet. 21–22) that "as this statute is remedial in nature a liberal construction should be given it in favor of" claimants, this Court has held that the statute of limitations

[5] These cases are asserted by petitioners (Pet. 2, 21) to be in conflict with the decision below.

here involved was "undoubtedly intended as one of repose." *United States* v. *Towery,* 306 U. S. 324, 330.

CONCLUSION

The decision below is correct, there is no conflict, and the question presented is not one of general importance. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

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JULY 1946.

APPENDIX

Section 19 of the World War Veterans' Act, 1924, 43 Stat. 612, as amended,[1] 38 U. S. C. § 445, provides, in part, as follows:

> In the event of disagreement as to claim, including claim for refund of premiums, under a contract of insurance between the Veterans' Administration and any person or persons claiming thereunder an action on the claim may be brought against the United States either in the district court of the United States for the District of Columbia or in the district court of the United States in and for the district in which such persons or any one of them resides, and jurisdiction is hereby conferred upon such courts to hear and determine all such controversies. * * *
>
> No suit on yearly renewable term insurance shall be allowed under this section unless the same shall have been brought within six years after the right accrued for which the claim is made or within one year after July 3, 1930, whichever is the later date, and no suit on United States Government life (converted) insurance shall be allowed under this section unless the same shall have been brought within six years after the right accrued for which the claim is made: *Provided,* That for the purposes of this section it shall be deemed that the right accrued on the happening of the contingency on which the claim is founded:

[1] Successive amendments are listed in note 2, *supra*, p. 5.

> *Provided further,* That this limitation is suspended for the period elapsing between the filing in the Veterans' Administration of the claim sued upon and the denial of said claim by the Administrator of Veterans' Affairs. * * *

Section 305 of the World War Veterans' Act, 1924, 43 Stat. 626, as amended, 38 U. S. C. § 516, provides, in part, as follows:

> Where any person has heretofore allowed his insurance to lapse, or has canceled or reduced all or any part of such insurance, while suffering from a compensable disability for which compensation was not collected and dies or has died, or becomes or has become permanently and totally disabled and at the time of such death or permanent total disability was or is entitled to compensation remaining uncollected, then and in that event so much of his insurance as said uncollected compensation, computed in all cases at the rate provided by section 302 of the War Risk Insurance Act as amended by Act December 24, 1919, c. 16, 41 Stat. 371 would purchase if applied as premiums when due, shall not be considered as lapsed, canceled, or reduced; and the Veterans' Administration is hereby authorized and directed to pay to said soldier, or his beneficiaries, as the case may be, the amount of said insurance less the unpaid premiums and interest thereon at 5 per centum per annum compounded annually in installments as provided by law: * * *.

The Joint Resolution of January 28, 1935, c. 1, 49 Stat. 1, 38 U. S. C. § 445c, "To clarify the

definition of disagreement in section 19, World War Veterans' Act, 1924, as amended," is as follows:

> That a denial of a claim for insurance by the Administrator of Veterans' Affairs or any employee or agency of the Veterans' Administration heretofore or hereafter designated therefor by the Administrator shall constitute a disagreement for the purposes of section 19 of the World War Veterans' Act, 1924, as amended (U. S. C., Supp. VII, title 38, sec. 445). This resolution is made effective as of July 3, 1930, and shall apply to all suits now pending against the United States under the provisions of section 19 of the World War Veterans' Act, 1924, as amended, and any suit which has been dismissed solely on the ground that a denial as described in this resolution did not constitute a disagreement as defined by section 19 may be reinstated within three months from the date of enactment of this resolution.

U. S. GOVERNMENT PRINTING OFFICE: 1949